

Union Calendar No. 397

105TH CONGRESS
2D Session

H. R. 3789

[Report No. 105-702]

A BILL

To amend title 28, United States Code, to enlarge Federal Court jurisdiction over purported class actions.

SEPTEMBER 10, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 397

105TH CONGRESS
2D SESSION

H. R. 3789

[Report No. 105-702]

To amend title 28, United States Code, to enlarge Federal Court jurisdiction over purported class actions.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1998

Mr. HYDE (for himself, Mr. MCCOLLUM, Mr. SMITH of Texas, Mr. CANADY of Florida, Mr. BRYANT, Mr. PEASE, and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 10, 1998

Additional sponsors: Mr. FRANK of Massachusetts, Mr. INGLIS of South Carolina, Mr. SENSENBRENNER, and Mr. ROGAN

SEPTEMBER 10, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 5, 1998]

A BILL

To amend title 28, United States Code, to enlarge Federal Court jurisdiction over purported class actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND REFERENCE.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
 3 *“Class Action Jurisdiction Act of 1998”.*

4 (b) *REFERENCE.*—*Whenever in this Act an amend-*
 5 *ment or repeal is expressed in terms of an amendment to,*
 6 *or repeal of, a section or other provision, the reference shall*
 7 *be considered to be made to a section or other provision*
 8 *of title 28, United States Code.*

9 **SEC. 2. JURISDICTION OF DISTRICT COURTS.**

10 (a) *EXPANSION OF FEDERAL JURISDICTION.*—*Section*
 11 *1332 is amended by redesignating subsections (b), (c), and*
 12 *(d) as subsections (c), (d), and (e), respectively, and by in-*
 13 *serting after subsection (a) the following:*

14 “(b)(1) *The district courts shall have original jurisdic-*
 15 *tion of any civil action, regardless of the sum or value of*
 16 *the matter in controversy therein, which is brought as a*
 17 *class action and in which—*

18 “(A) *any member of a proposed plaintiff class is*
 19 *a citizen of a State different from any defendant;*

20 “(B) *any member of a proposed plaintiff class is*
 21 *a foreign state or a citizen or subject of a foreign state*
 22 *and any defendant is a citizen of a State; or*

23 “(C) *any member of a proposed plaintiff class is*
 24 *a citizen of a State and any defendant is a citizen*
 25 *or subject of a foreign state.*

1 *As used in this paragraph, the term ‘foreign state’ has the*
2 *meaning given that term in section 1603(a).*

3 “(2)(A) *In a civil action described in paragraph (1)*
4 *in which—*

5 “(i) *the substantial majority of the members of*
6 *all proposed plaintiff classes are citizens of a single*
7 *State of which the primary defendants are also citi-*
8 *zens, and*

9 “(ii) *the claims asserted will be governed pri-*
10 *marily by the laws of that State,*
11 *the district court should abstain from hearing such action.*

12 “(B) *In a civil action described in paragraph (1) in*
13 *which—*

14 “(i) *all matters in controversy asserted by the*
15 *individual members of all proposed plaintiff classes*
16 *in the aggregate do not exceed the sum or value of*
17 *\$1,000,000, exclusive of interest and costs,*

18 “(ii) *the number of members of all proposed*
19 *plaintiff classes in the aggregate is less than 100, or*

20 “(iii) *the primary defendants are States, State*
21 *officials, or other governmental entities against whom*
22 *the district court may be foreclosed from ordering re-*
23 *lief,*

24 *the district court may, in its discretion, abstain from hear-*
25 *ing such action.*

1 “(3)(A) Paragraph (1) and section 1453 shall not
2 apply to any class action that is brought under the Securi-
3 ties Act of 1933.

4 “(B) Paragraph (1) and section 1453 shall not apply
5 to a class action described in subparagraph (C) that is
6 based upon the statutory or common law of the State in
7 which the issuer concerned is incorporated (in the case of
8 a corporation) or organized (in the case of any other en-
9 tity).

10 “(C) A class action is described in this subparagraph
11 if it involves—

12 “(i) the purchase or sale of securities by an
13 issuer or an affiliate of an issuer exclusively from or
14 to holders of equity securities of the issuer; or

15 “(ii) any recommendation, position, or other
16 communication with respect to the sale of securities of
17 an issuer that—

18 “(I) is made by or on behalf of the issuer
19 or an affiliate of the issuer to holders of equity
20 securities of the issuer; and

21 “(II) concerns decisions of those equity hold-
22 ers with respect to voting their securities, acting
23 in response to a tender or exchange offer, or exer-
24 cising dissenters’ or appraisal rights.

1 “(D) *As used in this paragraph, the terms ‘issuer’, ‘se-*
 2 *curity’, and ‘equity security’ have the meanings given those*
 3 *terms in section 3 of the Securities Exchange Act of 1934.*”.

4 (b) *CONFORMING AMENDMENT.*—Section 1332(c) (as
 5 *redesignated by this section) is amended by inserting after*
 6 *“Federal courts” the following: “pursuant to subsection (a)*
 7 *of this section”.*

8 (c) *DETERMINATION OF DIVERSITY.*—Section 1332, as
 9 *amended by this section, is further amended by adding at*
 10 *the end the following:*

11 “(f) *For purposes of subsection (b), a member of a pro-*
 12 *posed class shall be deemed to be a citizen of a State dif-*
 13 *ferent from a defendant corporation only if that member*
 14 *is a citizen of a State different from all States of which*
 15 *the defendant corporation is deemed a citizen.*”.

16 **SEC. 3. REMOVAL OF CLASS ACTIONS.**

17 (a) *IN GENERAL.*—Chapter 89 is amended by adding
 18 *after section 1452 the following:*

19 **“§ 1453. Removal of class actions**

20 “(a) *IN GENERAL.*—A class action may be removed to
 21 *a district court of the United States in accordance with this*
 22 *chapter, except that such action may be removed—*

23 “(1) *by any defendant without the consent of all*
 24 *defendants; or*

1 “(2) by any plaintiff class member who is not a
2 named or representative class member of the action
3 for which removal is sought, without the consent of all
4 members of such class.

5 “(b) *WHEN REMOVABLE*.—This section shall apply to
6 any class action before or after the entry of any order cer-
7 tifying a class.

8 “(c) *PROCEDURE FOR REMOVAL*.—The provisions of
9 section 1446(a) relating to a defendant removing a case
10 shall apply to a plaintiff removing a case under this sec-
11 tion. With respect to the application of subsection (b) of
12 such section, the requirement relating to the 30-day filing
13 period shall be met if a plaintiff class member who is not
14 a named or representative class member of the action for
15 which removal is sought files notice of removal within 30
16 days after receipt by such class member, through service or
17 otherwise, of the initial written notice of the class action
18 provided at the district court’s direction in accordance with
19 Rule 23(c)(2) of the Federal Rules of Civil Procedure.”.

20 (b) *REMOVAL LIMITATIONS*.—Section 1446(b) is
21 amended in the second sentence—

22 (1) by inserting “, by exercising due diligence,”
23 after “ascertained”; and

24 (2) by inserting “(a)” after “section 1332”.

1 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—*The*
 2 *table of sections for chapter 89 is amended by adding after*
 3 *the item relating to section 1452 the following:*

“1453. Removal of class actions.”.

4 (d) *APPLICATION OF SUBSTANTIVE STATE LAW.*—
 5 *Nothing in this section or the amendments made by this*
 6 *section shall alter the substantive law applicable to an ac-*
 7 *tion to which the amendments made by section 2 of this*
 8 *Act apply.*

9 (e) *PROCEDURE AFTER REMOVAL.*—*Section 1447 is*
 10 *amended by adding at the end the following new subsection:*

11 “(f) *If, after removal, the court determines that no as-*
 12 *pect of an action that is subject to its jurisdiction solely*
 13 *under the provisions of section 1332(b) may be maintained*
 14 *as a class action under Rule 23 of the Federal Rules of*
 15 *Civil Procedure, the court shall strike the class allegations*
 16 *from the action and remand the action to the State court.*
 17 *Upon remand of the action, the period of limitations for*
 18 *any claim that was asserted in the action on behalf of any*
 19 *named or unnamed member of any proposed class shall be*
 20 *deemed tolled to the full extent provided under Federal*
 21 *law.”.*

22 **SEC. 4. APPLICABILITY.**

23 *The amendments made by this Act shall apply to any*
 24 *action commenced on or after the date of the enactment of*
 25 *this Act.*

1 **SEC. 5. GAO STUDY.**

2 *The Comptroller General of the United States shall, by*
3 *not later than 1 year after the date of the enactment of this*
4 *Act, conduct a study of the impact of the amendments made*
5 *by this Act on the workload of the Federal courts, and report*
6 *to the Congress on the results of the study.*